

APPEAL NO. 040941
FILED JUNE 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was conducted on April 7, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. The hearing officer also determined that the Application for [SIBs] (TWCC-52) for the second quarter was not timely filed and that the respondent (carrier) was relieved of liability for SIBs from January 7 through January 27, 2004. The claimant appealed both determinations, essentially on a sufficiency of the evidence basis. The carrier filed a response, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the second quarter. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search during the relevant qualifying period (September 25 through December 24, 2003). The claimant asserted that she was entitled to SIBs for the second quarter based on being unable to work in any capacity during the qualifying period. She points to medical records that were presented as evidence at the hearing to support her assertion. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer specifically found that the claimant failed to provide a detailed narrative report. Further, the claimant was examined during February 2004 at the request of the carrier, and the doctor's report states that the claimant could perform "sedentary" work. The hearing officer found that the claimant had the ability to perform some work in some capacity.

In connection with the issue of timely filing of the application for second quarter SIBs, the claimant testified that she had asked her former employer to fax the application to the carrier on January 5, 2004. The carrier, however, stated that it did not receive notice until January 27, 2004, when the claimant faxed the application directly to the carrier. The hearing officer found that the application was not filed until January 27, 2004.

The issues in this case presented factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the

evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer's determination that the claimant is not entitled to second quarter SIBs is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer's determination that the carrier was relieved of liability for SIBs from January 7 through January 27, 2004, is also supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of the registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge